

Mark D. Belongia

From: Lance Raphael [lance@caclawyers.com]
Sent: Tuesday, July 15, 2008 2:06 PM
To: Mark D. Belongia
Cc: Stacy Bardo; Allison Krumhorn; Paralegal2 ; Nate Sinn
Subject: RE: Flores v. Diamond Bank

I will address it more specifically in our reply to your opposition to class certification. Remember, I have access to Pacer and all of the publicly filed documents you and Mr. Sinn have filed.

However, based upon your filings on behalf of people such as but not limited to Mr. Langston, in support of class certification, I would ask that you withdraw your opposition to class certification in this case as you have asserted legal positions in your opposition which conflict with legal positions you are presently asserting before this Judge Coar on the same legal issues involving certification.

"A **positional conflict of interest** arises when two or more clients have opposing interests in unrelated matters."

Positional conflicts of interests are addressed indirectly in Rules of Professional Conduct Rule 1.7. Rule 1.7(b) provides in part that a "lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibility to another client. . . ."

I am quoting from a federal case on the subject. But there is ample authority for you to research the issue.

Douglas R. Richmond, *Choosing Sides: Issue or **Positional Conflicts of Interest***, 51 FLA. L. REV. 383, 386 (1999). See generally Peter Margulies, *Multiple Communities or Monolithic Clients: **Positional Conflicts of Interest** and the Mission of the Legal Services Lawyer*, 67 FORDHAM L. REV. 2339 (1999); Norman W. Spaulding, *The Prophet and the Bureaucrat: Positional Conflicts in Service Pro Bono Publico*, 50 STAN. L. REV. 1395 (1998); John S. Dzienkowski, ***Positional Conflicts of Interest***, 71 TEX. L. REV. 457 (1993); Nancy Ribaud, *Issue Conflicts*, 2 GEO. J. LEGAL ETHICS 115 (1988); see also RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS, § 128 cmt. f (1998).

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